POOMINATHAN KUPPUSAMY

v.

BESPRIN STATIONERS SDN BHD

HIGH COURT MALAYA, SHAH ALAM
ZALEHA ZAHARI J
[CIVIL APPEAL NO: MT3-16-4-2000]
11 FEBRUARY 2003

LABOUR LAW: *Employment - Injury to employee - Whether employee entitled to indemnity paid by insurers under personal accident group policy taken by employer - No written contract of employment - Whether D-G of Labour had jurisdiction under s. 69 Employment Act 1955 - Whether benefits of group policy constituted a term of the employment - Whether employer/beneficiary entitled to keep indemnity paid by insurers - Whether employee/insured person the real beneficiary*

INSURANCE: *Group policy taken out by company - Indemnity for injured employees - Whether terms of policy intended to cover company's employees for injuries sustained - Whether policy designed to cover company as employer for costs incurred due to loss of manpower through employees' injuries - Whether company as 'beneficiary' under policy should keep indemnity paid by insurers - Whether employee as 'insured person' under policy entitled to the indemnity - Whether company holding moneys under indemnity on trust for injured employee*

This was an appeal by the appellant/employee against the decision of the Director General of Labour ('the D-G') dismissing his claim against the respondent/employer lodged under s. 69 of the Employment Act 1955 ('the Act') for the sum of RM25,000. The respondent had earlier received a sum of RM25,000 from its insurers ('AIA') arising out of a personal-accident group-policy ('the policy') taken in respect of its employees of whom the appellant was one. The respondent, however, had refused to pay out the said sum of money to the appellant who had injured himself in the course of his employment resulting in his left leg being amputated below the knee.

The two issues central to the instant appeal were: (i) whether the D-G was right in his conclusion that he had no jurisdiction to entertain the appellant's claim on account that there was no written or formal contract of employment as between the appellant and the respondent and, also, because the policy did not constitute a term of the appellant's employment; and (ii) whether

the fact that the respondent paid the premium for the policy and was named therein as the policy-holder and the beneficiary was conclusive that it should receive and keep the indemnity under the policy instead of the appellant.

Held:

[1] The D-G was wrong in holding that the terms of the appellant's employment were squarely those that were prevailing at the time when he commenced his employment with the respondent in 1994. The policy taken by the respondent in favour of its employees in 1996 should be interpreted as **constituting a term of their employment** the additional benefits of which they were entitled to. Consequently, any subsequent disputes concerning the payment of any indemnity under the policy would come within the purview of s. 69(1) of the Act and, hence, the jurisdiction of the D-G. (p 124 b-d)

[2] The naming of the respondent as the beneficiary under the policy was a matter of commercial expediency. The terms of the policy were clearly intended to cover the respondent's employees for any harm or personal injuries sustained. The policy was **never** meant to cover the respondent as an employer for costs incurred as a result of the loss of manpower by reason of its employees' accidents or injuries. On the contrary, the appellant who was named as an 'insured person' under the policy should be taken as a beneficiary under it. The result thus was that the respondent was under a duty to pay the said sum of RM25,000 it had received from AIA to the appellant. (pp 124 e-g & 125 a-b)

[Appeal allowed.]

Case(s) referred to:
Bank Bumiputra Malaysia Bhd v. Mohamed Salleh [2000] 2 CLJ 13 CA ***(foll)***

Legislation referred to:
Employment Act 1955, s. 69(1)(a)

For the appellant/plaintiff - S Selverajan; M/s Azariah & Assoc
For the respondent/defendant - N Devan; M/s Devan & Assoc

Reported by Gan Peng Chiang

JUDGMENT

Zaleha Zahari J:

This is an appeal against the decision of the Ketua Pengarah Buruh dated 19 July 1999 dismissing Poominathan a/l Kuppusamy's ("the appellant") claim against Besprin Stationers Sdn Bhd. ("the respondent") for a sum of RM25,000 which the appellant lodged pursuant to s. 69 of the Employment Act 1955 ("the Act").

The background facts of this appeal are not in issue.

The sum of RM25,000 in issue is the sum received by the respondent from American International Assurance Company Berhad ("AIA") pursuant to a PA Group Care Policy taken by the respondent in favour of certain named employees (hereinafter referred to as "the insurance policy") of whom the appellant is one of the named persons.

The appellant commenced employment with the respondent as a van driver on 15 November 1994. It is common ground that there is no written contract as to the terms and conditions of employment of the appellant by the respondent. The respondent took from AIA on 1 August 1996 the insurance policy shown at pp. 34-45 of the Appeal Record. The clauses material to the issues raised in this case are:

(a) Clause 2 which defines "insured person" as:

> the members and/or employees of the policyholder over 16 years and under 65 years of age as set forth in Part II of the Application and any additional members and/or employees as listed by the Policyholder in the Additions and Deletions Specification form filed with the Company.

(b) Part II of the Application Form (pp. 40-41 of the Appeal Record) which lists out the members/employees covered by the said policy. The appellant's name and particulars are listed as item 16;

(c) Part III of the policy (pp. 34 of the Appeal Record) under the heading "BENEFITS" which provides that:

> If while the policy is in force any insured person shall sustain injury and shall thereby suffer any of the results described in the following Schedule of Indemnities, the company on receipt and approval of proof shall subject to the provisions, conditions and limitations contained herein or which may be endorsed hereon pay an indemnity according to the said Schedule based on a percentage of the Principal Sum as specified in the Schedule of Indemnities.

It is not in issue that on 27 December 1998 the appellant had accidentally stepped into a chemical solution and sustained injury to his left foot as a result of which injury the appellant's left leg below the knee was amputated.

On the facts of the case the appellant, not the respondent, made a claim to AIA for a sum of RM25,000 pursuant to the insurance policy. In respect of the injury sustained by the appellant, AIA satisfied the claim lodged by paying RM25,000 to the respondent, not to the appellant. The respondent has since failed/refused to pay the RM25,000 insurance monies which they received from AIA to the appellant. Consequential upon the continued failure of the respondent to pay the RM25,000, the appellant lodged the claim at p. 7 of Appeal Record with Jabatan Buruh Pelabuhan Klang on 21 May 1999 pursuant to s. 69 of the Employment Act.

For convenience of reference the appellant's claim is reproduced below. It reads as follows:

> Saya berkerja sebagai van driver. Defendan telah menginsurans diri saya dalam group accident scheme. Defendan telah memberitahu bahawa semua pekerja di field seperti production dan driver diberi faedah ini. Selepas saya dapat kemalangan, Defendan telah menyerahkan semua dokumen kepada saya dan urusan sendiri claim tersebut. Dalam pada masa ini Defendan telah membuang saya kerana kaki saya memakai kaki palsu. Saya telah failkan kes di Jabatan Perhubungan Perusahaan. Oleh itu Defendan tidak mahu memberi faedah itu walaupun syarikat insuran telah bayar. Saya beranggap bahawa ianya salah satu faedah kepada saya.

The Labour Officer dismissed the appellant's claim on 19 July 1999 on the following ground:

> Daripada keterangan yang diberi oleh pengadu dan defendan adalah didapati bahawa tiada kontrak perkhidmatan bertulis. Oleh itu tiada syarat bertulis tentang insuran ini. Persoalan seterusnya adakah ianya satu ("implied condition") dalam syarat perkhidmatan pengadu ini.
>
> Pengadu masuk kerja pada 1.11.1994 dan polisi ini diambil pada 1.8.1996. Pengadu sendiri dalam keterangannya semasa di soal balas menyatakan bahawa beliau tidak tahu tentang polisi ini. Daripada keterangan juga didapati bahawa pengadu tidak pernah dijanjikan tentang faedah daripada insuran.

The Labour officer then concluded that he had no jurisdiction under s. 69(1) of the Act to entertain the appellant's claim. Section 69(1) reads as follows:

The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under:

(a) any term of the contract of service between such employee and his employer;

(b) any provisions of this Act or any subsidiary legislation made thereunder;

(c) the provisions of the Wages Council Act 1947 or any order made thereunder.

The Appellant Counsel's Submission

Encik Selvarajan submitted that the fact that the respondent's name appeared as "beneficiary" in the policy does not automatically mean that the respondent was entitled to the monies paid by AIA. He submitted that this practice was but a matter of expediency so as to avoid the hassle of a multitude of claims. The Court of Appeal's decision in *Bank Bumiputra Malaysia Bhd v. Mohamed bin Salleh* [2000] 2 CLJ 13 was cited as authority for this proposition. In that case the Hon. Justice Gopal Sri Ram JCA held as follows:

> ... group accident insurance policy. What it amounts to is this. The insured under the policy is the appellant. It alone is entitled to receive the benefits under the policy. But the policy does not cover any harm suffered by the appellant. It covers harm and injury suffered by the appellant's employees.
>
> In the absence of an agreement to the contrary, under the ordinary principles that govern the law of trusts, any employee would be able to lodge a claim, as a beneficiary of the policy, against MNI. This would cause great difficulties to the insurer because it will then be faced with a multitude of claims. To avoid such a result, there is inserted in the relevant policy the following clause:
>
> > The insurers shall be entitled to treat the insured as the absolute owner of the policy and shall not be bound to recognize any equitable or other claim to or interest in the policy.
>
> The effect of this clause is that the person such as the respondent cannot recover anything under the policy from MNI directly. However the appellant is entitled to receive any benefit due to the respondent. Once received, it will hold the monies as trustee for the respondent. This then is what a group insurance policy is all about.

Counsel for the appellant submitted that an implied trust exists in respect of the insurance monies in issue of which the respondent is a "trustee" and the appellant is the real "beneficiary". Accordingly he was of the view that the respondent held the RM25,000 monies received from AIA on trust for the appellant. The respondent's failure to pay the insurance monies from the AIA to the appellant must necessarily be construed by this court as a breach of fiduciary duty and a form of unjust enrichment at the expense of the injury which the appellant sustained.

He also highlighted the absence of an express clause in the policy stipulating that it was taken for the benefit of the respondent to compensate any cost incurred by the respondent for loss of manpower for the period that the employees were unfit to perform their duties due to an accident by having to hire other workers to perform the duty of the injured employee. In this situation he argued that it was accordingly not open for this court to interpret the policy to mean that it was taken for the benefit of the respondent cum employer and not for the benefit of the respondent's named employees.

The Respondent Counsel's Submission

Encik N. Devan, the respondent counsel, in his reply submitted that a contract came into existence when the employee signed the letter of offer and commenced his employment. He was of the view that by reason of the fact that the respondent took out the policy long after the appellant had served the respondent, and the fact that the respondent had never stated that the coverage by an insurance policy was to be a benefit of employment, the question of the insurance policy in issue being a term of the contract of employment between the appellant and the respondent does not accordingly arise.

He was of the view by reason of the fact that the respondent was expressly named as "beneficiary" must be construed by this court to mean the respondent, not the appellant, was to have the benefit of monies paid under the insurance policy.

He also submitted that the Labour Officer was right in holding that the appellant's claim does not fall within the ambit of s. 69(1)(a) of the Employment Act 1955 and in concluding that he had no jurisdiction to entertain the appellant's claim. According to him the Labour Officer's power is clearly confined to the matters prescribed under s. 69(1) of the Act. The issue of trusteeship raised by the appellant was outside the ambit of this provision and would accordingly have to be the subject matter of a separate action in court.

In these circumstances he accordingly prayed that the appeal against the Labour Officer's decision be dismissed with costs.

Findings

The first issue for determination is whether the Labour Officer was right in holding that he had no jurisdiction under s. 69 of the Act to entertain the appellant's complaint and in further holding that the appellant had failed to prove that the insurance policy in issue constitutes a term of the contract of employment?

On this issue I hold that the Labour Officer erred in holding that the terms of employment was to be construed as those prevailing at the time of the appellant's employment in 1994. In my view when the respondent took out the group insurance policy in favour of the named employees in 1996, this must accordingly be interpreted to mean that the benefit of such a policy was an additional benefit of employment constituting a "term" of employment to which the named employee was entitled to. Any subsequent dispute relating to the payment of such benefit would accordingly, in my view, fall within the ambit of s. 69 of the Act and that the Labour Officer had accordingly jurisdiction to entertain the appellant's claim.

As to who is entitled to be paid/receive the benefits under the policy, this would of course depend on the terms of the policy. On this issue I am in agreement with the appellant counsel's submission that the fact that the respondent was named as the policy holder, expressly referred to as "beneficiary" and the person who paid the premium for the insurance policy is not conclusive. Such a practice may well be a matter of expediency so as to avoid the hassle of a multitude of claims as held by the Court of Appeal decision in *Bank Bumiputra Malaysia Bhd v. Mohamed bin Salleh* [2000] 2 CLJ 13.

Upon careful perusal of the terms of the policy I am of the view that it clearly is intended to cover harm and injuries suffered by the respondent's named employees. The terms of the policy clearly is not intended to benefit the respondent cum employer for cost incurred by the respondent for loss of manpower for the period that the named employees were unfit to perform their duties due to an accident and in having to hire other workers to perform the duty of the employees. The absence of such an express clause to that effect is in my view significant.

In the situation before me, by naming the appellant as an "insured person" under the said policy, I am of the considered opinion that this must be construed to mean that the appellant is the beneficiary of the policy in issue.

I accordingly hold the insurance monies of RM25,000 belongs to the appellant and that the respondent was accordingly under a duty to pay to the appellant the sum of RM25,000.

I therefore accordingly allowed the appeal with costs and ordered the respondent to pay the sum of RM25,000 within 14 days of the making of this order.